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In the Supreme Court of the United States

OCTOBER TERM, 1984

NO. _____

WILLIAM R. MEADOWS,
Petitioner

versus

STATE OF ALABAMA
Respondent

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF ALABAMA

JOHN MARK McDANIEL
WILLIAM P. BURGESS, JR.
McDaniel & McDaniel
Attorneys At Law
313 Franklin Street
Huntsville, Alabama 35801
(205) 534-3018
Counsel for Petitioner

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The Petitioner, William R. Meadows, respectfully prays that a Writ of Certiorari issue to review the judgment of the Supreme Court of Alabama entered in this proceeding April 26, 1985.

OPINION BELOW

The judgment and opinion of the Court of Criminal Appeals of Alabama was rendered without opinion on January 22, 1985, affirming Petitioner's conviction in the trial court. Application for Re-hearing was filed within fourteen days of that date and was overruled by the Alabama Court of Criminal appeals without opinion on February 26, 1985. A Petition for Writ of Certiorari to the Court of Criminal Appeals was filed with the Alabama Supreme Court on March 11, 1985 and was denied without opinion on April 26, 1985. The actions of the Alabama appellate courts have not yet been reported in the Southern Reporter or Alabama Reporter as of the date of this petition.

JURISDICTION

The Petition for Writ of Certiorari to the Court of Criminal Appeals of Alabama was denied by the Supreme Court of Alabama on April 29, 1985. The Court of Criminal Appeals of Alabama granted a stay of execution of judgment for sixty days from April 26, 1985, in order for Petitioner to effect a Petition for Writ of Certiorari to the Supreme Court of the United States. This Petition for Writ of Certiorari was filed within sixty days of that date. The Court's jurisdiction is invoked under 28 U.S.C. Section 1257(3).

QUESTION PRESENTED

Whether the Alabama statutes defining sexual abuse, 1st degree are so vague, indefinite and ambigious as to violate the due process clause of the Fifth and Fourteenth Amendments to the United States Constitution?

STATEMENT OF THE CASE

Cheresa Denise Morrison, the prosecuting witness herein, was a friend of Petitioner's two children, Scarlett and Crystal Meadows. On July 3, 1983, Cheresa along with her mother and several other parties attended a barbecue party at the Petitioner's residence. Cheresa had been to the Petitioner's residence on a number of occasions prior to this party and had spent the night at Petitoner's home on several occasions.

The party continued on into the latter part of the evening and Cheresa fell asleep. She was carried by her mother upstairs in Petitioner's house and placed in bed with Petition-

er's daughter, Scarlett, who had already retired. Later that evening, Petitioner's daughter, Crystal, got in bed with the other two girls.

Cheresa testified that the Petitioner came into her room during the middle of the night and kissed her on her "Private". Cheresa stated that the Petitioner pulled her shorts "over" and kissed her one time on her "private". Cheresa stated that Petitioner did not touch her with his hands, and, further, stated that she had never been approached by or touched in an inordinate way by Petitioner prior to this occurrence. Cheresa also stated that Petitioner's daughters were awakened by the Petitioner's alleged actions. After waking up on July 4, 1983, Cheresa played with Petitioner's daughter and went home at approximately 11:00 that morning.

Deborah Morrison, Cheresa's mother, confirmed that Cheresa had gone to sleep while at the Petitioner's house and that she, Mrs. Morrison, had placed the child to bed. Mrs. Morrison stated that when Cheresa returned home on July 4, 1983, she told her mother of the incident of the preceding night and that after learning of same Mrs. Morrison contacted Petitioner's wife and Petitioner to complain of the incident.

Scarlett Meadows, Petitioner's daughter, appeared and testified on behalf of Petitioner saying that the children slept together on the evening of July 3, 1983 and that she, Scarlett, did not hear anyone come into the room. Terri Meadows, Petitioner's wife, testified about the incidents of the party, and that Cheresa spent the night with her daughters. Mrs. Meadows states that she was awakened at approximately 8:30 on July 4 and that the children were asleep

on the couch at that time. She stated that as the children awoke they ate breakfast and played until Cheresa left for home. Mr. Meadows, the Petitioner, testified to his employment as a warrant officer with the Army and that he had been employed by the Army for 19½ years. He stated that Cheresa had been a frequent visitor in his home and that he did not go upstairs of his home after 10:30 P.M. on July 3, 1983. He denied any involvement in the incident related by Cheresa.

At trial, Petitioner was convicted on April 17, 1984, of sexual abuse, 1st degree, and was sentenced to six years imprisonment in the State Penitentiary on May 31, 1984. The case was appealed to the Alabama Court of Criminal Appeals which affirmed the conviction of defendant without opinion on January 22, 1985. Application for Re-hearing was timely filed with the Alabama Court of Criminal Appeals and was denied without opinion on February 26, 1985. On March 11, 1985, Petitioner submitted a Petition for Writ of Certiorari to the Supreme Court of Alabama and that Petition was denied on April 26, 1985.

REASONS FOR GRANTING THE WRIT

1. The decision of the Alabama Court of Criminal Appeals affirming the trial court without opinion and the subsequent denial of Petitioner's Petition for Certiorari is in conflict with prior decisions of the Supreme Court of the United States as to standards for validity of criminal statutes.

As is discussed earlier in the Petition, the Petitioner was charged with and convicted of Sexual Abuse 1st degree as charged in the indictment. Section 13A-6-63(3) of the Code of Alabama provides as follows:

> "A person commits the crime of sexual abuse in the first degree if:
>
> He, being sixteen years or older, subjects another person to sexual contact who is less than twelve years old.

Section 13A-6-66(b) provides that "sexual abuse in the first degree is a Class C felony." In accordance with 13A-5-6(3) the punishment prescribed for a Class C felony is "not more than ten years or less than one year and one day." The trial court sentenced the Petitioner, herein, to imprisonment for six years.

The term "sexual conduct" as found in Section 13A-6-66(a) (3) is defined in Section 13A-6-60(3) as follows:

> "Any touching of the sexual or other intimate parts of a person not married to the actor, done for the purpose of gratifying the sexual desire of either party."

Petitioner challenges the constitutionality of the term "any touching", "sexual or other intimate parts of a person" and "done for the purpose of gratifying the sexual desire of either party" as unconstitutionally vague, ambigious and indefinite.

Crimes must be defined with definition and certainty. This is not only a common-law requirement but is recognized as an element of due process. See 12 ALR 3d 1448. The doctrine of vagueness originates in the due process clause of the Fourteenth Amendment, see *Lanzetta v. New Jersey*, 306 U.S. 451, 59 S.Ct. 618, 83 L.Ed. 888 (1939) and has provided the basis for striking down legislation which contains insufficient warning of what conduct is lawful. See *United States v. National Dairy Products Corporation*, 372 U.S. 29, 83 S.Ct. 594, 9 L.Ed.2d 561 (1963).

The constitutional requirements of definitness is violated by a criminal statute that fails to give a person of ordinary intelligence fair notice that his contemplated conduct is forbidden by statute. *United States v. Harris,* 347 U.S. 612, 74 S.Ct. 808, 98 L.Ed. 989 (1954). The underlying principal is that no man shall be held criminally responsible for conduct which he could not reasonably understand to be proscribed. See *Jordan v. DeGeorge,* 341 U.S. 273, 71 S.Ct. 703, 95 L.Ed. 886 (1951). Beyond that,

> "Although [the ordinance] may be neither vague, overbroad, or otherwise invalid as applied to the conduct charged against a particular defendant, he is permitted to raise its vagueness or unconstitutional overbreath as applied to others. And if the law is found deficient in one of these respects, it may not be applied to him either, until and unless a satisfactory limiting construction is placed on the [ordinance]. The [ordinance], in effect, is striken down on its face."
> *Plummer v. City of Columbus, Ohio,* 414 U.S. 2, 3, 94 S.Ct. 17, 18, 38 L.Ed.2d 3, 4 (1973).

The term "sexual or other intimate parts" is a particularly troublesome phrase having been concluded by juries in the State of Alabama to include an individual's stomach. See *Parker v. State,* 406 So.2d 1036 *cert. denied* 406 So.2d 1041 (1981). The term "intimate parts" has been defined by Alabama case law as "any part of the body which a reasonable person would consider private with respect to touching by another." *Hutcherson v. State,* 441 So.2d 1048 (Ala. Civ. App. 1983). This potentially includes birthmarks, blemishes or scars on any part of the body in which an individual has an intense, even unique, personal interest. Given the breadth of the definition of "intimate" as appears in Web-

ster's Third New International Dictionary (intimate being undefined by statute in Alabama), the entire human body or any part of it is encompassed by the statute. Accordingly, neither juries nor a potential defendant are given guidance as to what conduct is prohibited by law. Similarly, the term "touching" is vague in that it encompasses many behaviors including a tap or stroke of another's clothing with an object held or manipulated by the actor. Lastly, the language, "done for the purpose of gratifying the sexual desire of either party" is not only undefined by statute in Alabama but does not in and of itself sufficiently apprise a defendant or a jury of the offense proscribed.

Many criminal statutes and ordinances with considerably less severe penalties have been invalidated by this Court and lower federal courts due to overbreadth or vagueness: anti-picketing statutes, *Thornhill v. Alabama,* 310 U.S. 88, 60 S.Ct. 736, 84 L.Ed. 1093 (1940); anti-loitering statutes, *United States ex rel Newsome v. Malcolm,* 492 F.2d 1166 (2nd Cir.) aff'd 95 S.Ct. 886, 43 L.Ed.2d 196 (1975); annoyance ordinances, *Coates v. City of Cincinnati,* 402 U.S. 611, 91 S.Ct. 1686, 29 L.Ed.2d 214 (1971); and drug paraphernalia statutes, *Geiger v. City of Eager,* 416 F.2d 26 (8th Cir. 1980). Accordingly, if a defendant, as Petitioner herein, is to be subjected to penalties which may result in ten years imprisonment, the standard required of the statute in question should at least be as stringent as those required of ordinances when an individual may be jailed for a few days time.

In *Grayned v. City of Rockford,* 408 U.S. 104, 92 S.Ct. 2294, 33 L.Ed2d 222 (1972), this Court set out the policies behind the due process doctrine of vagueness. The Court stated as follows:

"It is a basic principle of due process that an enactment is void for vagueness if its prohibitions are not clearly defined. Vague laws often offend several important values. First, because we assume a man is free to steer between lawful and unlawful conduct, we insist that laws should give the person of ordinary intelligence a reasonable opportunity to know what is prohibited so he may act accordingly. Vague laws may trap the innocent by not providing fair warning. Second, if arbitrary and discriminatory enforcement is to be prevented, laws must provide explicit standards for those who apply them. A vague law impermissively delegates basic policy matters to policeman, judges, and jurys for resolution on *ad hoc* and subjected basis, with the attendant dangers of arbitrary enforcement."
id at 108-109, 92 S.Ct. at 2298-99.

In the instant case, the vagueness of the terms referred to above inevitably lead to arbitrariness and discriminatory enforcement given the exploitive potential of sexually oriented offenses. Petitioner therefore contends that the law as it is presently framed is invalid for vagueness and due to be reviewed by this Court.

CONCLUSION

For these reasons, a Writ of Certiorari should issue to review the judgment of the Supreme Court of Alabama.

Respectfully submitted,

JOHN MARK McDANIEL

WILLIAM P. BURGESS, JR.
(Admission to Court
applied for)

McDANIEL & McDANIEL
Counsel for Petitioner
313 Franklin Street
Huntsville, Alabama 35801
(205) 534-3018

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AFFIDAVIT OF PROOF OF SERVICE

State of Alabama County of Madison

We, the undersigned, John Mark McDaniel and William P. Burgess, Jr., 313 Franklin Street, Huntsville, Madison County, Alabama 35801, hereby certifies that we have deposited for service three (3) printed copies of a Petition for Writ of Certiorari to the Honorable Charles Graddick, the Attorney General for the State of Alabama, Montgomery, Alabama, and forty (40) printed copies to the Clerk of the Supreme Court of the United States.

This the 25th day of June, 1985.

John Mark McDaniel

JOHN MARK McDANIEL

William P Burgess

WILLIAM P. BURGESS, JR.

McDANIEL & McDANIEL
313 Franklin Street
Huntsville, Alabama 35801
(205) 534-3018

State of Alabama County of Madison

Subscribed and sworn to before me on this 25 day of June, 1985.

Glenda Raney

NOTARY PUBLIC

My commission expires the 22 day of June, 19 85.

APPENDIX A

Code of Alabama, 1975, Section 13A-6-63(3)

"A person commits the crime of sexual abuse in the first degree if:

> He, being sixteen years or older, subjects another person to sexual contact who is less than twelve years old.

Code of Alabama, 1975, Section 13A-6-60(3)

> "Any touching of the sexual or other intimate parts of a person not married to the actor, done for the purpose of gratifying the sexual desire of either party."